

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7044

Petition of City of Burlington, d/b/a Burlington)
Telecom, for a certificate of public good to)
operate a cable television system in the City of)
Burlington, Vermont (In Re: Amended Petition)
to amend Condition No. 17 of CPG related to)
completion of system build-out and to grant)
temporary relief from limitation in Condition)
No. 60 of CPG on financing operations))

Order entered: 6/17/2011

PROCEDURAL ORDER RE PENDING MOTIONS

On April 13, 2011, the City of Burlington, d/b/a Burlington Telecom ("Burlington Telecom") filed a motion for a declaratory ruling in this docket as to the inapplicability of Condition 60 of the above-referenced Certificate of Public Good ("CPG") to certain payments it has already made from the City's general fund. In the alternative, Burlington Telecom seeks the approval of the Public Service Board ("Board") under Condition 60 for such payments.

The Vermont Department of Public Service ("Department") and Comcast of Connecticut/ Georgia/ Massachusetts/New Hampshire/New York/North Carolina/Virginia/Vermont, LLC, d/b/a Comcast ("Comcast"), each filed responses to this motion on May 5, 2011. In response to a recommendation by the Department that the City provide additional evidence concerning this motion, Burlington Telecom filed a letter with the Board on May 27, 2011, providing additional information relevant to the motion.

Additional responses, if any, to Burlington Telecom's May 27 filing shall be due on or before June 24, 2011. In addition, the parties are requested to work together to develop a proposed schedule for any discovery, prefiled testimony or evidentiary proceedings related to this motion and to file a joint proposal on June 30, 2011. If no agreement is reached on a proposed

schedule for adjudicating this motion, each party may file its own recommendations for a proposed schedule on that same date.

In numbered paragraph 9 of its Order of October 8, 2010, the Board required Burlington Telecom to file with the Board more specific proposals as to the relief it is seeking with respect to Conditions 17 and 60 of its CPG by December 31, 2010. On December 30, 2010, Burlington Telecom filed a motion for the enlargement of time to meet this requirement until February 28, 2011. On February 28, 2011, as part of its third status report, Burlington Telecom requested that the date for compliance with this requirement be extended to June 30, 2011.

Burlington Telecom contends that it is not in a position to provide more specific language because that will depend on the outcome of continuing discussions with potential financial and strategic partners. Burlington Telecom indicates that once the City enters into a commitment letter with an investor, the terms of that commitment letter will likely inform specific proposals.

In letters filed on January 14, 2011, and March 18, 2011, the Department does not oppose Burlington Telecom's request for an extension of the applicable deadline. Although concerned about the passage of time, the Department observes that progress in developing specific proposals hinges on the resolution of negotiations with CitiCapital and potential investors.

By letter filed on March 18, 2011, Comcast opposes the requested extension of the deadline until June 30, 2011, and requested that the Board take prompt action to address the ongoing noncompliance of Burlington Telecom with its CPG. Comcast suggests that a further delay in determining the extent of Burlington Telecom's non-compliance may impair the Board's ability to impose conditions or take other regulatory action following an investment or purchase by a third party. Comcast also argues that appropriate rulings should be issued to move this matter forward.

I share the concerns of both the Department and Comcast about the continued passage of time without a resolution of this matter. However, under the circumstances, I do not see a reasonable alternative to granting the extension to the paragraph 9 requirement.¹ As the

1. On the other hand, even without any other support in the record, the timing of Burlington Telecom's extension requests tends to indicate a somewhat cavalier attitude to being in violation of paragraph 9 of the Board Order of 10/8/10. To file an extension request of a December 31 deadline on December 30, without getting the advance

(continued...)

Department noted, some of the delay has been caused by CitiCapital's lack of timely response on critical issues. In any case, until a commitment is obtained from a strategic investor, partner, or purchaser, specific proposals of Burlington Telecom to amend the build-out requirement of Condition 17 or the financing limitations of Condition 60 will not be well-informed nor especially meaningful. Although Comcast suggests that further delay will impair the ability of the Board to impose conditions or take other regulatory action following an investment or purchase commitment by a third party, it is not clear why this would be the case. It is also not clear what the appropriate rulings at this time would be to move this matter forward (and Comcast makes no suggestions in this regard).

Accordingly, I grant Burlington Telecom's motion to extend the deadline to comply with the requirements of paragraph 9 of the Board's Order of October 8, 2010, until June 30, 2011. The granting of this and any further extensions, however, is dependent on the immediate situation not getting worse. As the Department observed in its March 18 filing, the operational update provided in the third progress report of February 28, 2011, provided some reassurance as to the maintenance of the status quo for an additional period of time. Among other things, that progress report indicated that Burlington Telecom is producing sufficient cash flow to meet operational requirements, including capital expenditures, and is generating about \$40,000 a month in additional cash flow. It also stated that Burlington Telecom "normally maintains a positive balance in its bank account of between \$150,000 – \$300,000."

A similar financial update was absent from Burlington Telecom's fourth progress report filed on May 2, 2011. Burlington Telecom is directed to provide as much financial information as possible, particularly with respect to monthly cash flow reports, in future progress reports.

SO ORDERED.

1. (...continued)
consent of the other parties to such extension, inevitably meant that Burlington Telecom would be in violation of this paragraph 9 condition for some period of time (as it is currently). Burlington Telecom should file any future extension requests on a more timely basis.

Dated at Montpelier, Vermont, this 17th day of June, 2011.

s/John P. Bentley
John P. Bentley, Esq.
Hearing Officer

OFFICE OF THE CLERK

FILED: June 17, 2011

ATTEST: s/Susan M. Hudson
Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)